

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARIE W.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. 3:20-cv-05360-BAT

**ORDER AFFIRMING THE
COMMISSIONER'S DECISION AND
DISMISSING THE CASE WITH
PREJUDICE**

Plaintiff seeks review of the denial of his applications for Supplemental Security Income and Disability Insurance Benefits. He contends the ALJ erred by providing insufficient reasons to discount the opinions of three examining psychologists and one reviewing psychologist and by discounting plaintiff's testimony. Dkt. 21. The Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with prejudice.

BACKGROUND

Plaintiff is currently 43 years old, has a high-school education, and has worked as a septic tank servicer, landscape laborer, and grease pumper. Tr. 50, 58, 59–64, 499. In December 2015, he applied for benefits, alleging disability as of March 1, 2010. Tr. 114–15. His applications were denied initially and on reconsideration. Tr. 116–66. The ALJ conducted a hearing in May 2018 and issued a March 2019 decision. Tr. 21–35, 43–113. The ALJ found that plaintiff met the

1 disability insured status requirements through March 31, 2012. Tr. 23. The ALJ found that
2 plaintiff had a number of severe impairments: several physical impairments as well as major
3 depressive disorder. Tr. 23. In assessing residual functional capacity (“RFC”), the ALJ
4 determined that plaintiff could perform sedentary work with additional physical and mental
5 restrictions. Tr. 27. The mental restrictions were that plaintiff is able to perform simple, routine
6 tasks; he is able to maintain superficial contact with coworkers but cannot engage in team tasks;
7 he cannot maintain public contact; he is able to tolerate occasional interaction with supervisors
8 after an initial training period. *Id.* As the Appeals Council denied plaintiff’s request for review,
9 the ALJ’s decision is the Commissioner’s final decision. Tr. 1–3.

10 Plaintiff here does not challenge the RFC assessment with respect to physical limitations.
11 Plaintiff’s alleged errors refer only to the ALJ’s handling of three examining psychologists and
12 of a reviewing psychologist, and of plaintiff’s testimony about mental limitations. Dkt. 21, at 1.
13 Moreover, plaintiff does not appear to challenge the ALJ’s denial of his application for Disability
14 Insurance Benefits because all the evidence to which he refers post-dates the DIB date last
15 insured of March 31, 2012. *Compare* Dkt. 1 *with* Tr. 28 (noting that plaintiff’s only record
16 evidence pre-dating the date last insured were the medical chart notes at Tr. 402–08).

17 DISCUSSION

18 The Court will reverse the ALJ’s decision only if it was not supported by substantial
19 evidence in the record as a whole or if the ALJ applied the wrong legal standard. *Molina v.*
20 *Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012). The ALJ’s decision may not be reversed on account
21 of an error that is harmless. *Id.* at 1111. Where the evidence is susceptible to more than one
22 rational interpretation, the Court must uphold the Commissioner’s interpretation. *Thomas v.*
23 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

1 The Court affirms the ALJ's decision because the ALJ's evaluation of the psychologists'
2 opinions and of plaintiff's testimony on mental limitations was supported by substantial evidence
3 and was not the result of harmful legal error.

4 **1. Opinions of Examining Psychologists**

5 For disability applications like this one filed before March 27, 2017, more weight should
6 be given to the opinions of examining doctors than to the opinions of doctors who do not
7 examine or treat the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995); *see* 20 C.F.R.
8 § 404.1527(c)(2); SSR 96-2p (rescinded by Federal Register Notice Vol. 82, No. 57, page 15263
9 effective March 27, 2017). That did not happen here. On the question of mental limitations, the
10 ALJ discounted the examining opinions of Kimberly Wheeler, Ph.D., Alyson Ruddell, Ph.D.,
11 and Bruce Duthie, Ph.D., and gave substantial weight to the opinions of non-examining state
12 agency consultants Gary L. Nelson, Ph.D., and John F. Robinson, Ph.D. Tr. 30–32. The Court
13 therefore must examine whether the opinions of Drs. Wheeler, Ruddell, and Duthie were
14 discounted for specific and legitimate reasons that are supported by substantial evidence. *Lester*,
15 81 F.3d at 830. “The opinion of a nonexamining physician cannot *by itself* constitute substantial
16 evidence that justifies the rejection of the opinion of . . . an examining physician” *Id.*
17 (emphasis added).

18 Relevant here is that the ALJ did not reject the examining opinions of Drs. Wheeler,
19 Ruddell, and Duthie outright. Rather, the ALJ found that certain mental limitations deemed to be
20 marked were better characterized as moderate, and adjusted the RFC accordingly with reference
21 to substantial record evidence.

1 **a. Dr. Wheeler**

2 In September 2015, examining psychologist Dr. Wheeler opined that plaintiff had several
3 moderate limitations and also marked limitations in performing activities within a schedule,
4 maintaining regular attendance, and being punctual within customary tolerances; adapting to
5 changes in a routine work setting; and completing a normal workday and work week without
6 interruptions from psychological symptoms. Tr. 500–01. In September 2016, Dr. Wheeler
7 generally confirmed her 2015 opinion but found that plaintiff had only moderate limitations in
8 completing a normal workday and work week without interruptions from psychological
9 symptoms and had marked limitations in communicating and performing effectively in a work
10 setting. Tr. 1067. In both opinions, Dr. Wheeler rated the overall severity of plaintiff’s mental
11 impairments to be marked. Tr. 501, 1067.

12 The ALJ did not evaluate Dr. Wheeler’s September 2015 evaluation in great detail. The
13 ALJ noted only that Dr. Wheeler’s September 2016 evaluation was largely the same as in 2015,
14 plaintiff had presented as less vitriolic in 2016 than he had in 2015, and the 2015 evaluation
15 occurred prior to the application date. Tr. 31. The ALJ gave little weight to Dr. Wheeler’s
16 September 2016 opinion because (1) it was not supported by the source’s own mental status
17 examinations; and (2) it was not consistent with the reviewing opinions of Drs. Nelson and
18 Robinson, which encompassed more medical records and were supported by the medical record
19 and mental status examinations of Drs. Wheeler and Duthie. *Id.* Those reasons for discounting
20 Dr. Wheeler’s 2016 opinion were specific and legitimate, and any error stemming from the
21 ALJ’s failure to evaluate Dr. Wheeler’s 2015 opinion in greater detail was harmless.

22 First, the incongruity between Dr. Wheeler’s conclusion about plaintiff’s marked mental
23 limitations and the concurrent mental examination findings is a specific and legitimate reason to

discount the 2016 opinion. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). In the mental status examination, Dr. Wheeler observed that plaintiff was dressed in casual clothing with good hygiene, had speech within normal limits, had attitude and behavior within normal limits, had a softly anxious mood that was less vitriolic than it had been in 2015, and had an affect within normal limits. Tr. 1068. Dr. Wheeler also observed that plaintiff was within normal limits in every measurable category: thought process and content, orientation, perception, memory, fund of knowledge, concentration, abstract thought, and insight and judgment. Tr. 1069. That Dr. Wheeler had observed plaintiff to be within normal limits in every domain could reasonably be construed as undermining Dr. Wheeler's conclusion that plaintiff suffered from marked mental limitations rather than from the moderate mental limitations assessed in the RFC. This is particularly reasonable in light of plaintiff's daily activities recorded by Dr. Wheeler:

Wakes at 6:30a. Coffee. Get kids ready for school, take them to bus stop (an hour apart). Appointments. Paperwork. . . . Watch TV. Reads some. Has a few friends he keeps touch with. Maybe play games on the phone. Has been eating chicken, apples, some veggies – following a diet and has lost 40 lbs[.] so far. Drinks at least a gallon of water. Once kids home, homework, prep dinner.

Tr. 1066.

Second, the ALJ's reliance on the opinions of reviewing psychologists Drs. Nelson and Robinson was a specific and legitimate reason to discount Dr. Wheeler's September 2016 opinion because the reviewing opinions were supported by the medical record, including the mental status examinations by Dr. Wheeler and Dr. Duthie. Dr. Nelson reviewed records addressing mental-health limitations from February 2012 to May 2016. Tr. 121. Although Dr. Nelson gave significant weight to Dr. Duthie's examining opinion, he opined moderate instead of marked limitations in interacting appropriately with the public, supervisors, and coworkers because plaintiff did not demonstrate more severe restrictions while being seen at multiple

1 doctor's appointments. Tr. 121, 124, 127–28. On reconsideration, Dr. Robinson reviewed the
2 record of mental limitations through July 2016, as well as the consistency of plaintiff's
3 statements with third-party statements about activities of daily living. Tr. 145–46. As Dr. Nelson
4 did, Dr. Robinson gave significant weight to Dr. Duthie's examining opinion but opined
5 moderate rather than marked limitations in social interaction. Tr. 149, 153. Dr. Robinson noted
6 that plaintiff's roommate reported that plaintiff's daily activities included taking kids to the bus
7 stop, letting the pets outside, preparing simple meals daily, doing laundry, vacuuming, driving,
8 shopping, and managing money. Tr. 147. There is no indication that Drs. Nelson and Robinson
9 made unreasonable inferences based on their review of the medical records. In fact, as noted by
10 the ALJ, Tr. 31, the conclusions of moderate mental limitations by Drs. Nelson and Robinson
11 appeared consistent with the largely normal mental status examinations performed by Dr.
12 Wheeler and Dr. Duthie. *See* Tr. Tr. 933–34, 1068–69.

13 Plaintiff argues that the ALJ should have, but did not, examine Dr. Wheeler's September
14 2015 opinion because, though it predated the application date by three months, an ALJ is
15 required to develop the medical record for the 12 months preceding the application date. Dkt. 21,
16 at 8; *see* 20 C.F.R. § 416.1912. The Court finds that the ALJ reviewed Dr. Wheeler's 2015
17 opinion, as evidenced by the ALJ noting that plaintiff was more vitriolic when seen by Dr.
18 Wheeler in 2015, that the 2015 opinion was consistent with the 2016 opinion, and that the
19 September 2015 opinion had indeed occurred prior to the application date of December 2015.
20 *See* Tr. 31. To the extent the ALJ erred by not evaluating Dr. Wheeler's 2015 opinion in greater
21 detail, this error was harmless. The ALJ noted accurately that Dr. Wheeler's September 2015
22 opinion was consistent with her September 2016 opinion. Tr. 31. Thus, the specific and
23

1 legitimate reasons for discounting Dr. Wheeler's September 2016 opinion applied with equal
2 force to Dr. Wheeler's September 2015 opinion.

3 The Court finds that the ALJ cited specific and legitimate reasons for discounting Dr.
4 Wheeler's opinions and accounting only for moderate mental limitations in the assessed RFC.

5 **b. Dr. Ruddell**

6 In August 2017, examining psychologist Dr. Ruddell reviewed Dr. Wheeler's 2016
7 opinion and opined that plaintiff had several moderate mental limitations as well as marked
8 limitations in learning new tasks, adapting to changes in a routine work setting, and setting
9 realistic goals and planning independently. Tr. 1073, 1075. Nevertheless, Dr. Ruddell assessed
10 the overall severity of plaintiff's symptoms with a Global Assessment of Functioning ("GAF")
11 score of 51–60: moderate symptoms or moderate difficulty in social, occupational, or school
12 functioning. Tr. 1075; *see* American Psychiatric Ass'n, DIAGNOSTIC AND STATISTICAL MANUAL
13 OF MENTAL DISORDERS (DSM-IV-TR) 34 (2000). Dr. Ruddell also opined that vocational
14 training or services would minimize or eliminate barriers to employment and recommended a
15 referral to vocational rehabilitation. Tr. 1075.

16 The ALJ gave Dr. Ruddell's examining opinion little weight because (1) it was not
17 supported by her own mental status examination; and (2) it was not consistent with the reviewing
18 opinions of Drs. Nelson and Robinson, which encompassed more of the medical record and were
19 supported by the medical record and the mental examinations of Drs. Wheeler, Duthie, and
20 Ruddell. Those reasons for discounting Dr. Ruddell's opinion were specific and legitimate.

21 First, the ALJ reasonably determined that Dr. Ruddell's examining opinion was
22 inconsistent with her own mental status examination. Dr. Ruddell observed that plaintiff was
23 within normal limits in most domains but opined that plaintiff's mood was depressed, content of

1 thought was paranoid, memory was recent and immediate impaired and concentration on serial
2 3's was impaired. Tr. 1076. Nonetheless, Dr. Ruddell herself referred to a GAF score indicating
3 overall moderate limitations, suggested that vocational training would minimize or eliminate
4 barriers to employment, and recommended vocational rehabilitation services. Tr. 1075.

5 Second, the ALJ reasonably discounted Dr. Ruddell's opinion because it conflicted with
6 the reviewing opinions of Drs. Nelson and Robinson, other longitudinal medical evidence, and
7 the mental status examinations of Drs. Wheeler, Duthie, and Ruddell. Tr. 31. Moreover, as the
8 ALJ also noted, Dr. Ruddell opined marked limitations in certain domains—learning new tasks
9 and setting realistic goals and planning independently—that in 2016 Dr. Wheeler found to be
10 either mild or moderate limitations. *See* Tr. 31; *compare* Tr. 1067 with Tr. 1075. And Dr.
11 Wheeler opined marked limitations in certain domains—performing activities within a schedule,
12 maintaining regular attendance, and being punctual; and communicating and performing
13 effectively in a work setting—that Dr. Ruddell found to be either mild or moderate limitations.
14 *Compare* Tr. 1067 with Tr. 1075.

15 The Court finds that the ALJ cited specific and legitimate reasons for discounting Dr.
16 Ruddell's opinion and accounting only for moderate mental limitations in the assessed RFC.

17 **c. Dr. Duthie**

18 In May 2016, examining psychologist Dr. Duthie opined that plaintiff would have
19 marked difficulty interacting appropriately with the public, supervisors, and coworkers and
20 would have difficulty working because his work effort might be interrupted by angry outbursts
21 and panic disorder. Tr. 935. Otherwise Dr. Duthie opined no mental limitations that conflicted
22 with the ALJ's RFC assessment.
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1 The ALJ discounted Dr. Duthie's conclusions because they were based primarily on
 2 plaintiff's allegations rather than on the mental status examination, Dr. Duthie had no way of
 3 knowing what specific simple, routine tasks plaintiff could or could not complete, Dr. Duthie
 4 could not know what work-related tasks, environment, or interactions would trigger the reported
 5 panic symptoms, and the opinion was inconsistent with the mental examination findings of the
 6 examining psychologists. Tr. 30. The ALJ thus cited at least two specific and legitimate reasons
 7 for discounting Dr. Duthie's opinion: (1) the assessed mental limitations were not adequately
 8 supported by plaintiff's subjective complaints and Dr. Duthie's clinical findings; and (2) the
 9 severity of the assessed mental limitations was not supported by Dr. Duthie's own mental status
 10 examination and by the mental status examinations of Drs. Wheeler and Ruddell.

11 First, the ALJ could reasonably infer that Dr. Duthie's conclusions were supported only
 12 to the extent of the moderate mental limitations assessed in the RFC, i.e., plaintiff could perform
 13 simple, routine tasks; could maintain superficial contact with coworkers but could not engage in
 14 team tasks; he could not maintain public contact; he could tolerate occasional interaction with
 15 supervisors after an initial training period. *See* Tr. 27. Although Dr. Duthie opined that plaintiff's
 16 ability to work might "be interrupted by angry outbursts and panic disorder," Tr. 935, this
 17 assessed functional limitation appears to be based entirely on plaintiff's statements about feeling
 18 angry and panicked without reference to the medical record, clinical findings, or work history:

- 19 • He reports he is quite irritable and recently got into two
 20 fights, in which he physically contacted other people. In
 describing this, he said he "just flipped."
- 21 • He reports having a panic disorder, which seems to happen
 22 when he is around groups of people. He feels like he is
 constantly looked at and picked on by others. During panic
 23 attacks, he has a racing heart, he sweats, and he has
 shortness of breath. He also indicates he feels lightheaded
 and has tightness in his chest. He reports he feels anger

1 coming up, sometimes gets a headache, and feels poorly
2 about himself during these panic attacks.

- 3 • He is angry and sometimes gets into conflicts with others
4 but has no identified individual he wants to harm.

5 Tr. 933–34. Dr. Duthie’s conclusion that plaintiff would have marked difficulty interacting
6 appropriately with the public, supervisors, and coworkers, Tr. 935, appears to have been
7 adequately addressed in the RFC by eliminating public contact, allowing only superficial contact
8 with coworkers and no teamwork, and permitting only occasional contact with supervisors, Tr.
9 27. To the extent Dr. Duthie’s limitation on social interaction exceeded the RFC, the ALJ could
10 reasonably discount such limitations as unsupported by clinical findings, which noted only: “He
11 used to have hobbies but does not have funds to do them now. He does socialize with neighbors.
12 He indicates he can go camping in the ‘easy campgrounds.’” Tr. 934. “The ALJ need not accept
13 the opinion of any physician, including a treating physician, if that opinion is brief, conclusory,
14 and inadequately supported by clinical findings.” *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th
15 Cir. 2002).

16 Second, the ALJ could reasonably infer that Dr. Duthie’s assessed mental limitations
17 were contradicted by his own mental status examination and the mental status examinations of
18 Drs. Wheeler and Ruddell. Nothing in Dr. Duthie’s mental status examination, or in the other
19 examining mental status examinations, suggests that plaintiff’s mental limitations, whether
20 related to social contact, panic, or anger, went beyond the mental restrictions assessed in the
21 RFC. *Compare* Tr. 27 *with* Tr. 933–34 *and* Tr. 1069 *and* Tr. 1076.

22 The Court finds that the ALJ cited specific and legitimate reasons for discounting Dr.
23 Duthie’s opinion and accounting only for moderate mental limitations in the assessed RFC.

1 **2. Opinion of Reviewing Psychologist Holly Petaja, Ph.D.**

2 The ALJ gave little weight to Dr. Petaja's February 2018 non-examining opinion because
3 Dr. Petaja reviewed only the report from Dr. Wheeler, her findings mirrored those of Dr.
4 Wheeler, and Dr. Petaja's opinion could be discounted in the same manner due to inconsistency
5 with the opinions of Drs. Nelson and Robinson. Tr. 31. An ALJ may discount the non-examining
6 opinion of Dr. Petaja by referring to specific evidence in the medical record, *Sousa v. Callahan*,
7 143 F.3d 1240, 1244 (9th Cir. 1998).

8 Plaintiff is correct that the ALJ erred by determining that Dr. Petaja had reviewed only
9 the report from Dr. Wheeler. In fact, Dr. Petaja had reviewed only Dr. Ruddell's August 2017
10 examining opinion. Tr. 1070. This error was, however, harmless because the ALJ cited specific
11 and legitimate reasons for discounting Dr. Ruddell's opinion and those reasons apply with equal
12 force to Dr. Petaja's non-examining opinion.

13 The Court finds that the ALJ harmlessly erred by discounting Dr. Petaja's reviewing
14 opinion as being based on Dr. Wheeler's opinion rather than on Dr. Ruddell's opinion.

15 **3. Plaintiff's Testimony About Mental Limitations**

16 Plaintiff contends that the ALJ failed to cite clear and convincing reasons for discounting
17 his mental symptom testimony. *See Tommasetti*, 533 F.3d at 1039. The Court finds that the ALJ
18 accounted for plaintiff's alleged mental symptom testimony in the RFC by restricting him to
19 simple, routine tasks; superficial contact with coworkers and no team tasks; no public contact;
20 and occasional interaction with supervisors. *See* Tr. 27. To the extent plaintiff alleged greater
21 mental restrictions than those incorporated in the assessed RFC, the ALJ cited clear and
22 convincing reasons for discounting plaintiff's testimony: conflict with the opinions of Drs.
23

1 Nelson and Robinson, the longitudinal medical record, and the mental status examinations of
2 Drs. Wheeler, Ruddell, and Duthie.

3 The Court finds that the ALJ adequately accounted for plaintiff's testimony in assessing
4 RFC and, to the extent plaintiff's testimony was discounted, cited clear and convincing reasons
5 for doing so.

6 **CONCLUSION**

7 For the foregoing reasons, the Commissioner's decision is **AFFIRMED** and this case is
8 **DISMISSED** with prejudice.

9 DATED this 28th day of January, 2021.

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12 BRIAN A. TSUCHIDA
13 Chief United States Magistrate Judge
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